

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1571 of 2000

with

SPECIAL CIVIL APPLICATION NO. 1573 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHCHANDRA KALULAL

Versus

KOTHARI DILIPKUMAR MANIBHAI

Appearance:

MR BS PATEL for Petitioners

MR BP GUPTA for Respondent No. 1

MR A.J. PATEL WITH MR. RAVINDRA SHAH for
Respondent No. 2

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 21/03/2000

COMMON ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. A.J.

Patel. Upon request the petitions are taken up for final hearing today in view of the urgency of the matter. Since both these petitions, under Article 226 of the Constitution of India, raise common and identical questions and arising out of common order, in two Revision Applications recorded by the Gujarat State Co-operative Tribunal, on 8.3.2000, they are being disposed of by this common judgement.

2. A short question which has surfaced in this group of two petitions is, as to whether common order of the Tribunal dismissing the two Revision Applications arising out of an Interlocutory Application, in Lavad Suit No. 722 of 1999 and 723 of 1999, is in any way vulnerable, unreasonable, unjust or perverse, requiring interference by this court or not in exercise of plenary, equitable, extraordinary and discretionary writ jurisdiction.

3. A few material facts giving rise to these two petitions may first be articulated. At the outset, the petitioners are members of respondent No. 2 Co-operative Society known as 'Sukhdham Co-operative Society Ltd.' Respondent No. 1 is also member of the said society. The petitioners have inter alia contended that the construction started by the respondent No. 1 in a plot is illegal as it was a plot which was to be kept open. Since the construction work continued despite objections of the petitioners and it was in respect of two plots two Lavad Suits came to be filed before the Registrar of Board of Nominees by the petitioners against the construction and illegal induction of respondent No. 1 as a member of respondent No. 2 which is a registered society under the provisions of the Gujarat State Co-operative Societies Act, 1961 ('the Act' for short). The petitioners also submitted an application for interlocutory injunction which came to be rejected by the Lavad Court in both the suits. Therefore, two revisions came to be filed at the instance of the petitioners. The revisions also came to be dismissed as stated earlier. Hence this petition.

4. Learned advocate for the petitioners Mr. B.S. Patel has, seriously, criticised common order dismissing the two revisions. He has submitted that the Tribunal's decision in dismissing the two revisions is against the principles of natural justice as the advocate of the petitioners was not heard. It was, therefore, submitted that the Tribunal is required to be directed by remanding the matter, to rehear the revisions after giving an opportunity of hearing to the advocate of the petitioners. Obviously, the submissions raised on behalf of the petitioners are, seriously, countered by the

learned advocate Mr. A.J. Patel appearing for the respondents, inter-alia, contending that sufficient opportunity was given but it was not availed of and that in view of the directions of this Court the Tribunal had shown indulgence and also in view of the urgency of the matter since ad-interim relief was obtained, the matter was required to be heard, expeditiously, and in the circumstances it cannot be said that there was no opportunity given to the advocate of the petitioners.

5. It is a settled proposition of law that the writ court exercising its powers under Article 226/227 of the Constitution is not an appellate court. It has a supervisory power. The anxiety of the writ court is to see whether the decision making process is, in any way, affected, adversely, by extraneous consideration or circumstances. It is the process and not the product which has material bearing on the examination of the writ petitions. Bearing in mind the celebrated proposition of law and the limited parameters of a writ court, the merits of the petitions are required to be examined.

6. After having heard the learned advocate for the parties and considering the factual scenario emerging from the record of the present case coupled with celebrated legal proposition propounded, hereinbefore, both these petitions are meritless and require to be rejected. It cannot be said that the principles of natural justice are not observed by the Tribunal while dismissing the two Revision Applications in the peculiar facts and special circumstances of the case.

7. It would be interesting to mention few relevant and material chronicles which have significant connection. In so far as the submissions raised on behalf of the petitioners are concerned, the prima facie, contention is that the Tribunal should have awaited when the advocate for the petitioner had tendered sick report and he was unable to make submissions before it. This submission when one goes into the reality of the facts of the case, becomes unsustainable and unacceptable in view of the following admitted facts:

(i) Hearing of two Revision Applications by the Tribunal was fixed, on 3.3.2000. On that day, request was made for adjournment on behalf of the petitioners, in whose favour ad-interim order was passed earlier. The Tribunal was pleased to fix next date of hearing on 22.3.2000 which came to be advanced to 6.3.2000 upon request of the advocate for the respondents and in view of the

urgency in the matter. However, the learned advocate for the petitioners was informed by the clerk of the advocate of the respondents, at about noon on the same day, that the matter has been advanced to 6.3.2000 from 22.3.2000. On 6.3.2000 advocate for the petitioners Mr. Dave was not present. On this ground the adjournment was sought which was granted and the Tribunal fixed the matter, on 7.3.2000. On that day, again adjournment was sought and it was granted and the matter was posted, on 8.3.2000, for hearing. Again an adjournment was sought, on 8.3.2000, on the ground that some papers were required to be produced and the advocate was required to take rest for one week. However, the Tribunal was not pleased to oblige the petitioners once again and after considering the facts and circumstances of the case and hearing the advocate for the other side, passed the impugned common order on 8.3.2000.

- (ii) It would be interesting to mention at this stage that Special Civil Application Nos. 5541 of 1999 with Special Civil Application No. 5544 of 1999 came to be filed by the respondents against the grant of interim-relief in favour of the petitioners, herein, which two petitions came to be disposed of by this court (Coram: M.S. Shah, J) on 14.10.1999. This court, while discharging the notice, observed and specifically issued directions to the Tribunal before it the two Revision Applications were pending to the effect to hear and decide the Revision Applications as expeditiously as possible preferably within two months from the date of receipt of the writ of this court or certified copy of that order whichever was earlier.

8. It is, in this context, it will be, not only, interesting but startling to note that despite the specific directions issued by this court to the Tribunal, in absence of the petitioners on the following dates adjournments came to be granted by the Tribunal liberally and leniently at the instance and request of the petitioners.

20.10.1999, 3.12.1999, 22.12.1999, 19.1.2000, 7.1.2000,
4.2.2000, 16.2.2000, 1.3.2000, 3.3.2000, 6.3.2000,
7.3.2000

9. It would very well be seen that 11 times the matter came to be adjourned despite the specific directions of this court and that too in the Revision Applications in which the interim relief restraining the construction had been granted.

10. Could it be said, even for a moment, that in the aforesaid, factual scenario, the grant of adjournment for more than 11 times, at the instance of the petitioners and more so in a case where on going construction was restrained, in a plot of the society and with the permission of the competent authority that the impugned common order of the Tribunal is tainted by the vice of non-hearing, suffering from the vice of arbitrariness, the spontaneous and positive answer would be in the negative. No doubt, the expression 'principles of natural justice' is of wide connotations and jurisprudentiality ought to be complied with wherever it is necessary to the extent demanded in the circumstances of the case. No person can be allowed to delay the proceedings of the court more so when the urgency is inherent in the guise of the principles of natural justice. Therefore, the contention that the impugned common order of the Tribunal is bad, arbitrary and unjust for non-observance of principles of natural justice is unsustainable and unacceptable in the peculiar facts and circumstances of the case.

11. Incidentally, it may be mentioned, that the Registrar of Board of Nominees has found that there was no prima facie case, no compliance of evidence is there and irreparable injury will not be caused to the petitioners and that is why the interlocutory injunction restraining the respondent from further constructing on the plot came to be rejected and which upon examination, evaluation and appreciation came to be confirmed by the Tribunal in two Revision Applications. Therefore, also considering the celebrated principles governing grant or refusing of the interlocutory relief and the merits of the case, the impugned common order rejecting the two Revision Applications could not be said to be in any way unjust, unreasonable, perverse, requiring interference by this court and that too with the aids of writ jurisdiction. In the opinion of the court, both these contentions are meritless and are required to be rejected.

12. Learned advocate Mr. B.S. Patel for the petitioners has placed reliance on an unreported decision of the Hon'ble Apex Court in Civil Appeal No. 831 of

1999 arising out of Special Leave Petition (Civil) No. 1834 of 1997. After having given anxious thoughts and careful consideration to the said decision and also the order against which the decision is rendered, this court has no hesitation in finding that the said decision relied on by Mr. Patel is not applicable to the facts of the present case, as the decision has to be applied in on facts of each case and from the context of the case. It was found in that case that there was no fault of the appellant and case had gone unreported before the Hon'ble Court. The factual scenario emerging in the present case is altogether different. Since the petitioners succeeded in obtaining interim order against construction of the respondent which was on going after losing the legal battle in the Lavad Court. The Tribunal went on subscribing to the request for adjournment, at the instance, of the petitioners, on various occasions, not less than 11 times despite the specific direction of this court to dispose of the revision applications, expeditiously, and preferably within two months. Even after passing of such directions and making such observations the Tribunal in its leniency and liberalism granted adjournments, as many as, 11 times. Could it be said that the non-acceptance of 12th request for adjournment at the behest of a party who has obtained interlocutory, ad-interim order, in its favour against the construction on a plot which was at a distance of 25 feet and which was also in terms of the permission given by the competent authority, the answer would be in the negative. Therefore, the said decision does not help and bring in any capital for Mr. Patel.

13. Reliance is also placed by the learned advocate Mr. Patel on a decision of this court in the case of GRAM PANCHAYAT, MANEKWADA, DIST. AMRELI VS. PATEL BHURA RAMJI BHENSANIA reported, in 19 G.L.R., 308, and it is contended that in case of sudden sickness of the lawyer, the court must adjourn the case as it was a circumstance beyond the control of the party. This decision is also of no avail of the petitioner in light of the peculiar facts and special circumstances of the case. It is not a case, in the present group of petitions, that all of a sudden sick report was filed and it came to be rejected. The matter was fixed, on 3.3.2000. On 7.3.2000 it came to be adjourned. On two occasions only on the ground of sickness of the advocate, it was fixed upon the request of the petitioners. On 7.3.2000 the matter came to be adjourned on the ground of sickness of the advocate. Since the matter was urgent, there was a direction given by this court, the Tribunal exercised its discretion and liberalism to the extent permissible and possible.

Therefore, this is not a case of rejection of request for adjournment of hearing of a matter on merits, upon sudden sickness of a lawyer. The second decision therefore does not help the petitioner.

14. Learned advocate for the respondent Mr. A.J. Patel has placed reliance on a decision of this court rendered in "M.S. SHAH VS. ADDITIONAL DEV. COMMISSIONER reported, in 1999(2) G.L.H. 969" and has relied on the observations of this court in para 10. The relevant observations are very material for the merits of the present case. Therefore, it is expedient to quote the whole paragraph:

"It is the next submission on behalf of the petitioner that the advocate engaged for making submission before the competent authority, i.e. District Development Officer had gone to Haj pilgrimage and therefore he did not appear. The competent authority therefore ought to have waited till the advocate returned and was in a position to appear, act and plead. As the advocate was not available, petitioner's right to defend was jeopardised. The contention, being fallacious, must fail. The authority or any Forum is not bound to wait till the party or his advocate is, as per his convenience, pleasure and leisure ready to proceed with the matter. The authority or the Forum may, in its, discretion, having regard to the facts and circumstances of the case, grant time, or may pass the order otherwise, but certainly cannot foster the forces causing delay or delaying tactics, or procrastination, or mischief on the part of any party. He should not granting adjournments act as the lubricant to the device of the party trying to give a suitable shape to his case and baffle or frustrate his opposite party or benumb the proceedings, or action initiated against him. His duty is to see that within reasonable time the matter reaches its normal end. The party has, therefore, to be ready to appear and proceed with the matter on the date fixed assuming that no date will be granted. If it is not convenient to his advocate to proceed with the matter on the date fixed, it is for the party to manage to proceed with the matter either engaging another advocate or personally appearing and representing his case. If the time is not granted and for doing so discretion is, rightly, exercised, the party cannot be allowed to later on find fault

with the authority, and he cannot be allowed to lament on any ground. In no case, therefore, it can be said that if the date is not granted, the party loses the right to defend or loses the opportunity to submit his say. In the case on hand, advocates' going out of India on pilgrimage for couple of months cannot be termed a just and good cause to grant him and wait till he returned. The petitioner could have made alternative arrangement soon after the date was granted on 29.10.1996 the first day. He did not avail of the said chance not once but for 8 times. The contention, amounting to shedding crocodile tears, therefore cannot be accepted."

15. There is no doubt, in the mind of this court, that the dilatory and delay tactics cannot be encouraged in a court of law more so when we have to break the unbreakable backlog in the present system and set up. In a given case, all of a sudden sickness of the advocate is ordinarily respected so as to see that the meritorious matter is not thrown over the board in absence of the submissions of the advocate. However, it cannot be allowed or taken to a point or level where a party cannot be permitted to use it as a liver or handle, to successfully, use it as a delay tactics so as to not only delay the proceedings of the court but the construction of the work and that too in relation to an immovable property. In the present case the court has found that in absence of any prima facie case, interlocutory order was sought which was rightly refused by the Lavad Court and which was correctly affirmed and confirmed by the revision court, apparently and probably an attempt to seek adjournments one after the other on 11 occasions and again second attempt on the ground of illness of the advocate, in the facts of the present case, could not be said to be a bona fide one and therefore the observations made by the Tribunal could not be said to be in any manner unjust or unreasonable requiring interference of this court.

16. On behalf of the respondent No. 2 Mr. Ravindra Shah has prima facie rightly supported the respondents. According to his submission the plot on which the construction is going on is allotted to the respondent No. 1 and the construction is as per the permission and the society has no objection. He has also contended that the plot is not earmarked for any reservation or was not kept to be reserved for open space. In short, he has, fully, supported the version of the respondent No. 1.

17. However, since the suits are pending before the Board of Nominees and it will be open for the petitioners to move for an early hearing of the suits and it will be expedient and desirable for the Lavad Court to consider such an application for early hearing since the question of construction and the dispute about the immovable property is involved. On being moved, the Registrar of Board of Nominee will pass proper order for fixing early date of finalising the suits.

With above observations, the petitions are required to be rejected and accordingly they are rejected with costs. Rule is discharged.

(J.N. BHATT, J)

(pkn)